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IN THE MATTER OF:      *
                        *
Thomas J. Saporito, Jr. *
    Complainant        *      Date: 09/20/94
                        *
                        *      Case Nos.: 93-ERA-26
                        *      93-ERA-45
v.                      *
                        *
Arizona Public Service Co. *
Arizona Nuclear Power Project *
The Atlantic Group, Inc.    *
    Respondents           *
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**Recommended Decision and Order, on Remand of
Cases 93-ERA-26 and 93-ERA-45 by Secretary of Labor
for Reconsideration and Clarification of
Recommended Decision and Order Approving Settlement
Dismissing Claim**

On February 8, 1994 I issued the Recommended Decision and Order Approving Settlement Dismissing Claim in the Case Nos. 93-ERA-26 and 93-ERA-45. The Recommended Decision and Order in each of these cases was identical. The order recommended:

1. that the Secretary of Labor approve the Settlement Agreement and General Releases Appendix "A" and Appendix "B".

2. that the claim of Thomas J. Saporito, Jr. against Arizona Public Service Company and Arizona Nuclear Power Project be dismissed with prejudice.

3. that the claims against The Atlantic Group ("TAG"), relating in any way to Mr. Saporito's employment with TAG at APS' Palo Verde Nuclear Generating Station or attempts or efforts to obtain employment with TAG at PVNGS be dismissed with prejudice.

On March 31, 1994 the Secretary of Labor issued his Final Decision and Order Approving Settlement and Dismissing Cases 92-ERA-30, 93-ERA-26 and 93-ERA-45.

On May 19, 1994, the Secretary of Labor issued his order wherein he rescinded his order of March 21, 1994 and remanded these cases to the respective Administrative Law Judge for reconsideration and clarification of their recommended orders clarifying the scope of the settlement agreement and the extent to which any claims by Complainant against any of the Respondents remain unresolved by that agreement.

In his Order of May 19, 1994 rescinding Approval of the Settlement, the Secretary of Labor stated the following:

...on April 21, 1994, Complainant moved for establishment of a briefing schedule on what he characterizes as his remaining

claims against Respondent The Atlantic Group (TAG), or in the alternative, for reconsideration of my March 21, 1994 Order. Complainant asserts that the settlement, upon which the ALJs' recommended orders and my Order was based, was limited to Complainant's claims relating to Complainant's employment or attempts to obtain employment with TAG at the Palo Verde Nuclear Generating Station (PVGNS) and did not settle "other claims" [of Complainant] against TAG, unrelated to [Complainant's] employment or attempts to obtain employment at PVGNS." Complainant's Motion at 2. Attached to Complainant's motion is a copy of an order issued by Administrative Law Judge Claimant J. Kichuk on January 10, 1994 in Case NOS. 93-ERA-00026 and 93-ERA-00045, which was not submitted with the Joint Motion, the combined Settlement or the ALJ's recommended orders. Judge Kichuk's order states, among other things, that the ALJ "retains jurisdiction in Cases Number 93-ERA-00026 and 93-ERA-00045." Attorneys for Respondent The Atlantic Group wrote a letter to the Acting Director of the Office of Administrative Appeals on April 28, 1994, stating that "it is our position that there are no remaining claims against The Atlantic Group." Counsel's letter, however, only refers to Case No. 92-ERA-30 when it asserts that "there is no active claim that needs reconsideration at this time."

Acting upon the Remand Order I reviewed the record in cases 93-ERA-26 and 93-ERA-45 and made the findings which are set forth in my Order No. 1 - On Remand of Cases 93-ERA-26 and 93-ERA-45 by

the Secretary of Labor which I issued on July 14, 1994. The numbered findings were as follows:

1. The Settlement Agreement executed by the parties and submitted to me for recommended approval by the Secretary is entitled thus:

Settlement Agreement

(92-ERA-30, 93-ERA-26, 93-ERA-45;

Claim filed with U.S. Department of Labor on
October 23, 1993).

2. The cases over which I have jurisdiction and are assigned to me for determination and disposition are 93-ERA-26 and 93-ERA-45.

3. The settlement agreement covers/includes 93-ERA-26 and 93-ERA-45 and is between and signed only by Arizona Public Service Company (APS) and Mr. Saporito.

4. Settlement Agreement

In Case 93-ERA-26 and 93-ERA-45

a. APS Agrees to pay damages to Saporito.

b. Saporito agrees to dismiss with prejudice

1. any and all claims or actions he has

against APS

2. any and all claims or actions he has against TAG, relating in any way to Saporito's employment with or wanting to obtain employment with TAG at APS's Palo Verde Nuclear Generating Station ("PVNGS")

c. Saporito agrees to execute General Releases which are attached to the settlement agreement as Appendices A & B.

Appendix A - general release signed by Saporito and APS

Appendix B - general release signed only by Saporito wherein he releases TAG from any claim he has relating to his employment by TAG at PVNGS or failure to employ Saporito at PVNGS.

This release is in consideration of the settlement agreement between Saporito and APS.

- Appendix B contains the following caveat in paragraph "H" appearing on page 4

"This release of claims against TAG does not

limit or restrict Saporito from pursuing or filing any past, present or future claims of any nature whatsoever, whether based on tort, contract, or any other theory of recovery, against TAG for TAG's alleged failure to employ Saporito with employers other than APS, and/or at sites other than Palo Verde Nuclear Generating Station."

I made the following conclusions and issued the order:

1. This Court has no jurisdiction which extends beyond the date of this Court's Decision and Order recommended to the Secretary in cases 93-ERA-26 and 93-ERA-45, and issued on February 8, 1994.

2. This Court rescinds its retention of jurisdiction expressed in paragraph 6 of its Order Following Conference Call - Hearing - Granting Continuance, which Order is dated January 10, 1994 wherein paragraph 6 states "the Court retains jurisdiction in cases number 93-ERA-00026 and 93-ERA-00045."

3. All parties and counsel are directed to submit a response to this Order indicating their agreement with

the findings expressed herein above or stating any alternative position which will assist this Court in complying with the directive of the Secretary.

4. Saporito and his counsel are directed to state to this Court the Complainant's present position as to the scope of the settlement agreement and the extent to which any claims by Complainant against any of the respondents remain unresolved by the settlement agreement.

5. Complainant Saporito and his counsel are directed to state to this Court the extent, if any, or to which the claims dated October 23, 1993 and February 26, 1994 relate to 93-ERA-26 and 93-ERA-45 and/or to the settlement agreement.

6. All responses by the parties and their counsel are to be submitted to this Court on or before August 15, 1994 with copies sent to opposing counsel.

7. After all responses have been reviewed by this Court, I will then determine whether a phone conference should be scheduled for necessary discussion for clarification of the recommended decision prior to submission to the Secretary by this Court in cases 93-

ERA-26 and 93-ERA-45.

All parties responded to the Order of July 14 1994. APS agreed with my findings numbered 1 to 4 and with unnumbered findings in the order with the order's conclusion that no further issues or claims remain before me in Case Nos. 93-ERA-26 and 93-ERA-45 and that it is appropriate to rescind the retention of jurisdiction expressed in paragraph 6 of the order. However, APS did not agree with the Order in unnumbered finding that paragraphs F & G of Appendix B of the Settlement can be construed to _____"that Saporito intended to release TAG from all claims which arose prior to the execution of the release on December 15, 1993" stating that "all of the parties to this proceeding ... APS, TAG and Mr. Saporito ... have consistently agreed that (1) the Settlement Agreement and Releases resolved Mr. Saporito's claims against TAG as they related to his employment or attempts to obtain employment at PVNGS; and (2) if Mr. Saporito had claims against TAG that were unrelated to APS or PVNGS, such claims were preserved without regard to whether they arose prior or subsequent to December 15, 1993. These conclusions were articulated in the parties' January 18, 1994 "Joint Motion for Approval of Settlement Agreement and Dismissal with Prejudice to Secretary of Labor" and a jointly executed Memorandum of Points and Authorities."